

Joint Standing Committee on Foreign Affairs, Defence and Trade
ANSWERS TO QUESTIONS ON NOTICE
Department of Industry and Science
Inquiry into Government support for Defence industry exports
10 February 2015

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY AND SCIENCE

TOPIC: *DEFENCE TRADE CONTROLS ACT 2012*

REFERENCE: Question on Notice (Proof Committee Hansard, 10 February 2015).

QUESTION No.: QoN 1 – pages 2-3

Senator FAWCETT – *Can you give us some details of some of the major impediments that have been raised [in response to the Defence Trade Controls Act]? We have had various submissions. Have they been process based issue or have they been structural issues? What gets raised? I understand that there is a committee but I want to understand what some of those issues are? Are they mainly from particular sectors of the Defence area – like SMEs?*

Ms GAMBARO – *Will you be able to provide that? We are trying to work out whether there are impediments and what we need to do to ensure that it is more streamlined. They are the issues that have been raised in the past. Is it something that you would be able to provide to us?*

Dr JENSEN – *I have had some issues of concern raised with me by academia about the DTCA in terms of research direction. I have heard of the potential of research groups heading overseas because they are concerned that the DTCA will very much constrain them and, in fact, they are not fully conversant with whether or not what they are doing will be covered by the DTCA. There is also the potential censure which the act provides for in terms of research activity which they may be involved in and the determination by Defence of something that may or may not be covered by the DTCA. It appears that things are not very clear from academia's perspective. I would certainly appreciate both—you know, anything you have got to say now but also in greater detail in the response that you are going to provide to Ms Gambaro.*

ANSWER

Implementation of the Defence Trade Controls Act 2012 (the Act) is being overseen by the Strengthened Export Controls Steering Group, chaired by the Chief Scientist, Professor Ian Chubb AC. The steering group reports to the Minister for Defence and the Minister for Industry and Science. Its reports to the Ministers are available on the steering group's website, <https://exportcontrols.govspace.gov.au/>

Stakeholders across the defence industry and the university/research sector have raised a number of issues with the original legislation. Stakeholders were generally concerned that the Act, in its current form, would impose an unreasonable regulatory burden which could impact on the competitiveness of Australian businesses and research. A summary of stakeholder issues was considered by the steering group and through its pilot program tested alternative options. This work formed the basis for the steering group's recommendations which informed the Amendment Bill. The table below provides a summary of the key issues and how they are being addressed.

Table: Summary of stakeholder issues with the original Defence Trade Controls Act 2012.

Issues raised	Stakeholder group	How issue are beings addressed
Stakeholders concerned that the publication offence under the original legislation is too broad in scope, out of step with risk and imposing an excessive administrative burden on universities and DECO	Universities, other research organisations	<p>The Amendment Bill adopts a risk-based approach narrowing the scope of the publication offence to technology controlled under Part 1 of the Defence and Strategic Goods List (the ‘Military List’).</p> <p>The Amendment Bill allows for a Ministerial prohibition power, providing a mechanism to prevent the publication of controlled technology on Part 2 of the Defence and Strategic Goods List (the ‘Dual Use List’), in cases where the Government has concerns about a publication’s impact on national Security.</p> <p>The Amendment Bill also excludes pre-publication activity (the drafting process) for Part 2 technology from the supply offence.</p>
Stakeholders concerned that controls on brokering under original legislation are too broad in scope, and are out of step with the intent of the brokering provisions	Defence industry (primes and SMEs), universities, other research organisations	The Amendment Bill narrows the scope of the brokering offence to the Military List; those technologies related to Weapons of Mass Destruction programs/activities; as well as technologies specifically tied to military end-use, and excludes brokering from and within listed states that are members of all four main export control regimes (the Wassenaar Arrangement, Missile Technology Controls Regime, Nuclear Suppliers Group, Australia Group). It also excludes Australian citizens brokering while located within listed states that are members of all four export control regimes.

Issues raised	Stakeholder group	How issue are beings addressed
Concern that under the original legislation the administrative burden on parties that may export or supply controlled items would be excessive, and out of step with risk and overseas practice. This could impact on international research and other collaboration, and place affected parties at a competitive disadvantage compared to their international counterparts	Defence industry (primes and SMEs), universities, other research organisations	<p>Through employment of a risk-based approach, the Amendment Bill removes controls on the verbal supply (e.g. phone conversations with overseas-based persons) of DSGL-controlled technology except where the supply is providing access to DSGL technology or is for a Weapons of Mass Destruction programs/activities or a military end-use.</p> <p>The Amendment Bill also exempts contractors supporting the Australian Public Service, Australian Defence Force, police and certain members of the Intelligence Community when supplying DSGL-controlled technology to these entities for official purposes.</p> <p>The introduction of a suite of additional open licences for lower risk items to lower risk destinations, such as states that are members of all four main export control regimes. Permit duration to be extended to five years, or the life of a project.</p>
Concern that stakeholders will not have sufficient time or resources to comply with the legislation by 16 May 2015, when offence provisions were originally due to come into effect	Defence industry (primes and SMEs), universities, other research organisations	The Amendment Bill extends the transition period to 12 months from Royal Assent of the Amendment Bill. Offence provisions will not apply until the end of this additional transition period. This will give stakeholders sufficient time to establish compliance with the legislation. DECO is to work closely with stakeholders to assist them with establishing compliance, including through the development of detailed guidance material.
Stakeholders noted the complexity of the Defence and Strategic Goods List, which is difficult to navigate and to understand, as well as the difficulty in determining which items or activities are captured under the legislation	Mostly universities and other research organisations, who had no prior experience with the list, but industry also which is supportive of development of a tool	DECO is developing an online tool to assist stakeholders with navigating of the Defence and Strategic Goods List. Detailed guidance materials, tools and training to help stakeholders understand and comply with their obligations are also being developed.

Through the work of the steering group the Defence Trade Controls Amendment Bill 2015 was developed and reflects the response to issues noted in the above table. Recent public consultation on the Bill has found broad stakeholder support for the Bill, which will address many of the issues with the current legislation.

During consultation on the Bill, stakeholders also felt that 12 months would be needed to implement the required compliance arrangements and review existing activities. This was agreed by the Government and is addressed in the Bill. Stakeholders also recommended the steering group should continue to provide oversight of the 12 month implementation and the first review of the legislation after two years.

QUESTION No.: QoN 2 – page 5

Mr EWEN JONES: *With those CRCs, and their development, who owns the IP out of those things?*

Mr Chesworth: *Can I take that on notice, because the ownership of IP is a complicated issue in any contractual arrangement.*

Mr EWEN JONES: *It is very interesting.*

Mr Chesworth: *I could get an answer for you pretty quickly.*

Dr Byrne: *Could I clarify: are you asking generally about CRCs at the level of principle or specifically the DMTC?*

Mr EWEN JONES: *Generally from your perspective or more specifically about the CRCs that are Defence funded—the IP that comes out of that. Who owns that?*

ANSWER

The Defence Material Technology Centre (DMTC), funded through the Defence Future Capability Technology Centre (DFCTC) Program owns all Intellectual Property (IP) that is developed under the Commonwealth Funding Agreement. The following conditions relate to DMTC's ownership of the IP:

- DMTC grants the Commonwealth with an irrevocable, worldwide license to use the IP or any background IP;
- DMTC must comply with relevant restrictions on the use of defence related material, such as the export controls applicable to defence and dual-use goods; and
- IP must also, where appropriate, be made available for the benefit of end-users beyond the participants of the DMTC.

DMTC IP Policy

The DMTC has developed its IP policy to ensure that the IP is captured and maintained for the benefit of the Australian Defence Organisation (ADO). Under this policy the Essential Participants have the right to utilise IP created in projects as part of their Participants Agreements with the DMTC.

DMTC's IP policy aims to encourage the adoption and utilisation of IP developed through DMTC projects. The policy also facilitates active engagement in project development activities by industry partners and end-users. This arrangement removes the need for negotiation of usage licenses after the IP has been developed. Supporting Participants IP rights are also enabled through negotiation with the DMTC on a case-by-case basis.

QUESTION No.: QoN 3 – page 5

Mr CRAIG KELLY: *Could you give me a figure on the export dollar value that you have been supporting?*

ANSWER

The Department of Industry and Science does not collect data on the value of defence exports, and as such we are unable to provide a specific answer.

The Department delivers the administration of the New Air Combat Capability – Industry Support Program (NACC-ISP) on behalf of the Defence Materiel Organisation (DMO), however this role does not include gathering statistical information on Australia's Defence exports in relation to the Program's grantees. As part of the Project Completion Report, grantees are asked:

- Did you achieve the agreed project objective(s) as outlined in your NACC-ISP funding agreement, and if so, do you believe that the project was a success? and
- Is there any further work required for the project to become a success?

Although the NACC-ISP Funding Agreement has provision for Post Project Reporting, DMO has not requested AusIndustry to implement additional reporting requirements.

QUESTION No.: QoN 4 – page 6

ACTING CHAIR: *You talked about CRCs before. I wanted to just following up on that. Particularly when we are dealing with complex project management type issues, does the department work closely with the university sector in this area?*

Mr Chesworth: *Is that broadly or on any particular issue?*

ACTING CHAIR: *Particularly entrepreneurship and IP.*

Mr Chesworth: *I am not sure of the current situation, but certainly IP Australia has had some advisory committees in place in the past that have had representations from universities. Dr Beth Webster is one representative who comes to mind.*

ACTING CHAIR: *Where is Dr Webster based?*

Mr Chesworth: *Probably the best thing is for me to get back to you on that. In relation to universities, there are a number of interactions between the department and universities on a range of things. One within my own division in the past has been in relation to biotechnology, for example.*

ANSWER

Professor Beth Webster is the Director of the Intellectual Property Institute of Australia (IPRIA), Director of the Centre for Transformative Innovation at Swinburne University of Technology and a Professorial Fellow, Melbourne Institute of Applied Economic and Social Research at the University of Melbourne. Professor Webster is a member of the Government's Advisory Committee on Intellectual Property (ACIP).

The Department of Industry and Science has had a range of interactions with universities in recent years, for example:

- Membership of ACIP includes several academics in addition to Dr Beth Webster;
- Development of an IP toolkit – University stakeholders attended roundtable meetings early in the development of the IP Toolkit being developed by the Department of Industry and Science and IP Australia and, to date, six universities and a peak university body have provide written comments on the draft Toolkit;
- The Innovation Australia Board includes as members:
 - Dr Michele Allan, Chancellor of Charles Stuart University and Board Chair at the William Angliss Institute;
 - Ms Susan Wilson who leads Global Strategic Partnerships for Deakin Research Commercial, Deakin University;
 - Dr Susan Pond AM, Adjunct Professor, United States Study Centre, The University of Sydney;
 - Ms Fiona Pak Poy, Director of Adelaide Research and Innovation Pty Ltd, a company owned by the Adelaide University that manages its consultancy and Commercialisation activities; and
 - Dr Laurie Hammond, member of The Australian Technology Network of Universities Research Industry Advisory Board (as a representative of Innovation Australia).

- The R&D Incentives Committee of Innovation Australia includes as a member Dr Bruce Godfrey, Senior Manager at ANU Enterprise – a wholly owned company of the Australian National University;

Under the auspices of the National Enabling Technologies Strategy, the Department supported the Stakeholder Advisory Council and the Enabling Technologies Expert Forum, both of which included academics from a range of disciplines. The Department also undertook many activities under the Strategy where academics and other experts contributed to discussions about the use in Australia of technologies such as biotechnology and nanotechnology.